

# Calendar No. 671

82D CONGRESS  
1st Session

SENATE

REPORT  
No. 705

## JACK A. WITHAM

AUGUST 27 (legislative day, AUGUST 1), 1951.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

### REPORT

[To accompany H. R. 1253]

The Committee on the Judiciary, to which was referred the bill (H. R. 1253) for the relief of Jack A. Witham, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

#### PURPOSE

The purpose of the proposed legislation is to direct the payment of \$1,103.70 to Jack A. Witham in settlement of his claim for Marine Corps pay and allowances for the period February 2, 1946, through February 2, 1948.

#### STATEMENT

Jack A. Witham was enlisted in the United States Marine Corps Reserve on October 14, 1941, and was assigned to active duty on that date. He was promoted to master technical sergeant on November 3, 1944. On November 13, 1944, he was sentenced by deck court to be reduced to the next inferior rate (technical sergeant). By error he was carried as staff sergeant until his discharge on February 1, 1946. On February 2, 1946, Witham re-enlisted in the United States Marine Corps as a private and was appointed staff sergeant on that date. He was appointed technical sergeant on October 1, 1946, and honorably discharged as such on February 2, 1948. On July 19, 1949, the proceedings, findings, and sentence of Witham's deck court were set aside by the Acting Secretary of the Navy. Thereafter, his claim for pay as a master technical sergeant was allowed and settled to and including the date of expiration of his first enlistment, February 1, 1946.

H. R. 1253 would direct payment to Witham of \$1,103.70, representing the difference in the amount actually received by him during his second enlistment and the amount he would have received during that period had he been serving in the rank of master technical sergeant.

The Navy Department concedes that had claimant been carried as a master technical sergeant at the time of his discharge on February 1, 1946, he probably would have been reappointed to that rank upon his reenlistment. Had it not been for the deck court of 1944, which proceedings, findings and sentence were later set aside, Witham would have received the pay of a master technical sergeant until the expiration of his reenlistment in February 1948. As the result of this invalid deck court, his rate was reduced to technical sergeant (staff sergeant through error), at which rate he was discharged in 1948.

This bill would award Witham the difference in pay between the rates of master technical sergeant and technical sergeant for his 2-year reenlistment period only. It should be noted that claimant has already been paid, at the instigation of the Navy, for the difference in grades from the deck court of November 1944 to the expiration of his enlistment in February 1946.

The Navy Department opposes this bill on the ground that claimant did not perform the duties of master technical sergeant during his second enlistment. It should be noted that he did not perform these duties between November 1944 to February 1946; however, the Navy recommended payment to claimant at the higher grade during this period.

The committee is of the opinion that the overriding equities are with the claimant and therefore recommends that claimant be reimbursed in the amount set out in H. R. 1253.

Evidentiary data, as well as the Navy report, are incorporated herein by reference from House Report No. 149, Eighty-second Congress.

